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13 and Colony Investors IV, L.P.

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 COLONY CAPITAL, LLC, a
17 Delaware limited liability company,
18 and COLONY INVESTORS IV,
19 L.P., a Delaware limited partnership,

20 Plaintiffs,

21 v.

22 THE NATIONAL RETIREMENT
23 FUND, and DOES 1 through 10,
24 inclusive,

25 Defendants.

Case No. 2:11-cv-07235 R (AGRx)

**DECLARATION OF DANIEL M.
PETROCELLI IN SUPPORT OF
THE COLONY PLAINTIFFS'
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS FOR
IMPROPER VENUE OR
TRANSFER VENUE PURSUANT
TO 28 U.S.C. § 1404(A) OR 1406(A)**

**MEMORANDUM OF POINTS AND
AUTHORITIES AND DECLARATION
OF RICHARD WELCH FILED
CONCURRENTLY HEREWITH**

Hearing Date: October 24, 2011
Time: 10:00 a.m.
Courtroom: 8

Honorable Manuel L. Real

DECLARATION OF DANIEL M. PETROCELLI

I, DANIEL M. PETROCELLI, hereby declare:

1. I am an attorney at law, licensed to practice before all courts in the State of California. I am a partner of O'Melveny & Myers LLP, lead counsel of record in the above-captioned action. I reside in Los Angeles and work in Century City. I submit this declaration in support of Plaintiffs Colony Capital LLC ("Colony") and Colony Investors, IV, L.P. ("Colony IV") Opposition to Defendant's Motion to Dismiss for Improper Venue or Transfer Venue Pursuant to 28 U.S.C. § 1404(A) or 1406(A). I am knowledgeable about the matters set forth below and, if called and sworn as a witness, could and would competently testify thereto.

2. Attached as Exhibit A is a true and correct copy of the Agreement and Declaration of Trust, UNITE HERE National Retirement Fund, Amended and Restated Effective as of February 3, 2009.

3. Attached as Exhibit B is a true and correct copy of a letter from Ronald Richman to me, dated September 16, 2011.

4. Attached as Exhibit C is a true and correct copy of a letter from me to Ronald Richman, dated September 16, 2011.

5. Attached as Exhibit D is a true and correct copy of a letter from Ronald Richman to me, dated September 20, 2011.

6. Attached as Exhibit E is a true and correct copy of a letter from Holly Weiss to Matthew Kline, dated September 21, 2011.

7. Attached as Exhibit F is a true and correct copy of a letter from Matthew Kline to Ronald Richman, dated September 21, 2011.

8. Attached as Exhibit G is a true and correct copy of a letter from Holly Weiss to Matthew Kline, dated September 22, 2011.

9. Attached as Exhibit H is a true and correct copy of an email from Anthony DiLello to Holly Weiss, dated September 23, 2011.

1 10. Attached as Exhibit I is a true and correct copy of a letter from Holly
2 Weiss to Anthony DiLello, dated September 24, 2011.

3 11. Attached as Exhibit J is a true and correct copy of an email from
4 Anthony DiLello to Holly Weiss, dated September 25, 2011.

5 12. Attached as Exhibit K is a true and correct copy of the Amended
6 Consolidated Complaint for Violation of the Securities Exchange Act of 1934, filed
7 August 9, 2007 in the Central District of California in the case entitled, *In re*
8 *Cooper Companies, Inc. Securities Litigation*, Case No. SACV-06-00169-CJC
9 (RNBx) (the “*Cooper Case*”).

10 13. Attached as Exhibit L is a true and correct copy of the Declaration of
11 Richard N. Rust in Support of Lead Plaintiffs’ Motion for Class Certification, filed
12 September 15, 2008 in the Central District of California in the *Cooper Case*.

13 14. In January 2011, Colony received two letters from the Fund alleging
14 that Resorts incurred a complete withdrawal from the Fund as of December 31,
15 2010. In March 2011, Colony IV received two identical letters from the Fund—
16 both of which had been sent to the wrong address. True and correct copies of these
17 letters are attached together as Exhibit M.

18 15. Attached as Exhibit N is a true and correct copy of excerpts from the
19 deposition of Richard Rust, taken September 23, 2011.

20 16. Attached as Exhibit O is a true and correct copy of the Order Granting
21 Plaintiffs’ Motion for Class Certification, entered on January 6, 2009, in the *Cooper*
22 *Case*.

23 17. Attached as Exhibit P is a true and correct copy of the Affirmation of
24 Max Garfield filed in the Southern District of New York on March 1, 2011 in the
25 case entitled, *The Retirement Plan of the UNITE HERE National Retirement Fund*
26 *et al. v. Kombassan Holdings, A.S.*, Case No. 1:06-cv-05861-JSR.

27 18. Attached as Exhibit Q is a true and correct copy of the Complaint filed
28 by the Trustees of the UNITE HERE National Retirement Fund in the Northern

1 District of California on July 18, 2006, in the case entitled, *Trustees of the UNITE*
2 *HERE National Retirement Fund v. San Francisco Sewing Association*, Case No.
3 3:06-cv-04394-MMC.

4 19. Attached as Exhibit R is a true and correct copy of a Notice of Funding
5 Status for the UNITE HERE National Retirement Fund, which my colleagues
6 located through at the U.S. Department of Labor website at
7 www.dol.gov/ebsa/pdf/e-notice06080924.pdf.

8 20. Attached as Exhibit S is a true and correct copy of an excerpt of a U.S.
9 Department of Labor Form Report for the UNITE HERE Local Union in Los
10 Angeles, California, which my colleagues located. We highlighted portions of page
11 50, which indicate that the Local Union of UNITE HERE located within the Central
12 District of California participates in the administration of the National Retirement
13 Fund.

14 21. Attached as Exhibit T is a true and correct copy of a print out of a
15 webpage of the UNITE HERE Local 11 Union, which my colleagues located at
16 <http://www.unitehere11.org>.

17 22. Attached as Exhibit U are true and correct copies of a profile of the
18 Yucaipa Companies, LLC from the Bloomberg Businessweek website, located at
19 <http://investing.businessweek.com>; a printout of the Yucaipa Companies, LLC
20 homepage, located at <http://yucaipaco.com>; and a printout of the PIMCO
21 homepage, located at <http://pimco.com>. These documents were also located by my
22 colleagues through an internet search.

23 23. Attached as Exhibit V is a true and correct copy of the docket report
24 for the *Cooper* Case. At page 65, it shows that case was dismissed on December
25 13, 2010.

26 24. Attached as Exhibit W is a true and correct copy of the opinion in *C &*
27 *S Wholesale Grocers, Inc. v. N.E. Teamsters Pension Fund*, 4 Emp. Ben. Cas.
28 (BNA) 1097 (D. Vt. 1982).

25. Attached as Exhibit X is a true and correct copy of the opinion in *Carthage Mills Div. v. Textile Workers Pension Fund*, 4 Emp. Ben. Cas. (BNA) 1329 (S.D. Ohio Mar. 3, 1983).

26. Attached as Exhibit Y is a true and correct copy of an email from Holly Weiss to Anthony DiLello, dated September 25, 2011.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration is executed this 26th day of September 2011 at Los Angeles, California.

Daniel M. Petrocelli

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